

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.494 of 1989

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

SHAMJI VELJI GHETIYA

Appearance:

Shri D.N. Patel, ADDL. PUBLIC PROSECUTOR for Petitioner
MR HARESH N JOSHI for Respondents
Shri Mahendra K. Patel appointed by the High Court
for respondents.

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 09/09/98

ORAL JUDGEMENT :

The State has preferred this appeal against the order of acquittal dated 9.5.1989 recorded by the learned Judicial Magistrate (First Class), Lalpur in Criminal Case No.305 of 1985.

2. This Court has carefully gone through the evidence which was suggested to be read by learned

Additional Public Prosecutor. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as;

- (i) the view of the trial judge as to the credibility of the witnesses,
- (ii) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial,
- (iii) the right of the accused to the benefit of any doubt, and
- (iv) the slowness of an appellate court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses (See AIR 1934 PC 227).

3. From the record it appears that the Food Inspector Shri Maganbhai Chaudhary, PW 1 visited the shop of the accused on 9.1.1985 and in presence of Panchas collected a sample of chilly powder for analysis under the provisions contained in Prevention of Food Adulteration Act (hereinafter referred to as "the Act") and Prevention Food Adulteration Rules (hereinafter referred to as "the Rules"). After dividing the sample into three equal parts the same was taken in dry and clean bottles, each bottle thereafter was fastened with a stopper. The bottles were labelled as per Rule 15 thereof and were placed in brown paper. Thereafter the same were sealed in the manner required under Rule 16 of the Rules. One sample was forwarded to the Public Analyst for analysis. Memorandum of impression was forwarded separately on 10.1.1985 as per Rule 18.

4. Report from the Public Analyst was received on 22.1.1985 indicating that the sample analysed is adulterated. Hence after obtaining the consent prosecution was filed. The accused pleaded not guilty. The trial court rejected the prosecution case and acquitted the accused. Contradictory statements were made by the complainant in evidence. With regard to

purchase of article he has stated that "it is true that the bill/ cash memo, Exhibit 7 is on a simple piece of paper and the accused has given the same." He has also stated that "it is true that the bill, Exhibit 7 is not given by the accused".

5. It is admitted by the Food Inspector that the accused is using printed cash memo and in the instant case on a piece of paper the name of the article of food and the amount is mentioned. It is further pointed out that there is a doubt about the sealing of the bottle as the Food Inspector has not clearly stated that on the container seal was affixed. The Public Analyst in his report has stated that the seal was affixed on the container as well as the outer cover of the sample. The document, Exhibit 14, details of sample forwarded by the Public Analyst indicates that on the container there was no seal. The other contentions raised by the learned Public Prosecutor are not required to be gone into as it is clear from these two circumstances that when the Food Inspector is giving two versions about the bill and though he knows that the accused has printed the Bill Book, he has thought fit to use a paper slip as a cash memo and that the report forwarded by the Public Analyst and the details of sample raises doubt about the bottles being properly sealed.

6. Having discussed the foregoing and as the Court is in agreement with the view expressed by the trial court, I am not discussing the evidence of each witness in detail in view of the observations made by the Honourable Supreme Court in the case of State of Karnataka v. Hemareddy, AIR 1981 SC 1417, which reads as under :

" This Court has observed in *Girija Nandini Devi v. Bigendra Nandini Choudry* (1967) 1 SCR 93 : AIR 1976 SC 1124 that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the court the decision of which is under appeal, will ordinarily suffice."

7. In view of this, the order of acquittal is not required to be interfered with. The Appeal is dismissed.

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